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CLERK U.S. DISTRICT COURT
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LOS ANGELES

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8 Of Counsel:

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15 UNITED STATES DISTRICT COURT
16 CENTRAL DISTRICT OF CALIFORNIA
17 WESTERN DIVISION
18

19 CENTOCOR, INC.,

20 Plaintiff,

21 v.

22 GENENTECH, INC. and CITY OF
23 HOPE NATIONAL MEDICAL
CENTER,

24 Defendants.
25

Case No. CV 08-03573 PA
COMPLAINT FOR
DECLARATORY JUDGMENT (AGRx)

26 Plaintiff Centocor, Inc. ("Centocor"), for its complaint, alleges as
27 follows:
28

1 **NATURE OF THE CASE**

2 1. In this action, Centocor seeks a declaration that U.S. Patent
3 No. 6,331,415 (the "Cabilly II patent") is invalid, unenforceable and/or not infringed
4 by Centocor's abciximab and ustekinumab antibody products.

5
6 **THE PARTIES**

7 2. Centocor is a corporation organized under the laws of the
8 Commonwealth of Pennsylvania with a principal place of business in Horsham,
9 Pennsylvania.

10
11 3. On information and belief, Genentech, Inc. ("Genentech") is a
12 Delaware corporation with its principal place of business in South San Francisco,
13 California.

14
15 4. On information and belief, City of Hope National Medical Center
16 ("City of Hope") is a California not-for-profit organization with its principal place of
17 operation in Duarte, California.

18
19 5. On information and belief, Genentech and City of Hope are co-
20 assignees of the Cabilly II patent.

21
22 **JURISDICTION AND VENUE**

23 6. This action arises under the Declaratory Judgment Act, Title 28 of
24 the United States Code, Chapter 151, for the purpose of determining an actual and
25 justiciable controversy between the parties hereto. The Court has subject matter
26 jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

1 7. This Court has personal jurisdiction over Genentech based on its
2 principal place of business in California. This Court has personal jurisdiction over
3 City of Hope based on its organization under the laws of the state of California and
4 because its principal place of operation is in California.

5
6 8. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b),
7 (c), and (d).

8
9 **THE CABILLY PATENTS**

10 9. On April 8, 1983, Shmuel Cabilly, Herbert Heyneker, William
11 Holmes, Arthur Riggs and Ronald Wetzel (the “Cabilly Applicants”) filed a patent
12 application in the United States Patent and Trademark Office (“PTO”) that issued on
13 March 28, 1989, as U.S. Patent No. 4,816,567 (the “Cabilly I patent”). On
14 information and belief, the Cabilly Applicants assigned their rights to Genentech
15 and/or City of Hope.

16
17 10. On the same day that the Cabilly I patent issued, U.S. Patent
18 No. 4,816,397 (the “Boss patent”) issued to Michael Boss, John Kenten, John Emtage
19 and Clive Wood (the “Boss Applicants”). On information and belief, the Boss
20 Applicants assigned their rights to Celltech Therapeutics Limited (“Celltech”).
21 Celltech is a British company with its principal place of business in Slough, England.

22
23 11. At the time that the Boss and Cabilly I patents issued, the Cabilly
24 Applicants had a continuation application pending in the PTO (the “Cabilly II
25 application”). The Cabilly Applicants copied claims from the Boss patent in order to
26 provoke the PTO Board of Patent Appeals & Interferences to initiate an interference
27 proceeding to determine priority – i.e., to determine whether it was the Cabilly
28 Applicants or the Boss Applicants who had made the purported invention first.

1 12. In February 1991, the PTO Board declared a patent interference
2 between the pending Cabilly II application and the Boss patent on the basis that both
3 claimed the same purported invention.

4
5 13. After years of adversarial proceedings in the PTO, in August
6 1998, the PTO Board found that the Boss patent was entitled to priority over the
7 Cabilly II application. The Final Decision indicated that the Cabilly Applicants were
8 “not entitled to a patent”

9
10 14. In October 1998, Genentech filed a civil action to appeal the
11 decision of the PTO Board awarding priority to the Boss patent (Genentech, Inc. v.
12 Celltech Ltd., Case no. C98-3926 (N.D. Cal.)). In March 2001, the parties to that
13 action filed a notice of settlement and joint request for entry of settlement
14 instruments. As part of their settlement, the parties asked the district court to find
15 that Genentech won the priority contest. The district court then issued an order
16 directing the PTO to vacate its determination that the Boss Applicants were entitled
17 to priority, to revoke the Boss patent, and to issue a patent on the Cabilly II
18 application.

19
20 15. After the district court issued its order to the PTO, the PTO
21 referred the Cabilly II application to an examiner for further action, including
22 consideration of materials previously submitted to the PTO that had not clearly been
23 considered by the examiner.

24
25 16. One of the papers submitted by the Cabilly Applicants prior to
26 declaration of the interference was an Information Disclosure Statement that
27 identified, among other references, Valle et al., Nature, 300:71-74 (1982). In its
28 Information Disclosure Statement, the Cabilly II Applicants characterized this

1 reference as being cited as part of a group of references identified “in the interests of
2 good order” because it was cited during prosecution of the Cabilly I application. The
3 Cabilly Applicants also expressly represented that the Valle (1982) work “is readily
4 distinguishable from the instant claims in that the oocytes are not transformed with
5 DNA, but instead are used to transiently express mRNA preparations.” (Sept. 18,
6 1991 IDS at page 2). This Information Disclosure Statement was signed by a
7 representative of Genentech. This representation, however, contradicted a
8 representation Genentech had made about the Valle (1982) reference when it was
9 opposing Celltech’s European Boss patent.

10
11 17. During the time that Genentech and Celltech were involved in the
12 interference proceeding, Genentech submitted an opposition to Celltech’s European
13 patent (EP-B-0120694), the European patent corresponding to the Boss patent. The
14 claims in the Celltech European Boss patent and the claims in the Cabilly II
15 application were both directed, inter alia, to processes for producing a heterologous
16 Ig molecule in a single host cell comprising transforming the host cell with separate
17 DNA sequences encoding polypeptide chains comprising at least the variable
18 domains of the heavy and light chains and then expressing those chains separately in
19 the transformed host cell.

20
21 18. As part of the grounds for opposition in the European proceeding,
22 Genentech identified the Valle (1982) publication as a reference that anticipated the
23 Boss European patent. Contrary to the characterization of this reference during the
24 Cabilly II application prosecution, Genentech specifically represented to the
25 European Patent Office that Valle (1982):

26 clearly teaches the production of an immunologically
27 functional heterologous immunoglobulin molecule in
28 eukaryotic cells transfected by separate DNA molecules

1 encoding its heavy and light chains, respectively. In view
2 of the broad implications evidenced by the Abstract, the
3 fact that the actual experiment was performed with
4 microinjected mRNAs is not relevant. In any event,
5 because the messenger RNA carries the information from
6 DNA to the ribosomal sites of protein synthesis, it is
7 functionally equivalent to DNA.
8

9 19. Thus, when it was in its interest to do so during its opposition to
10 Celltech's European Boss patent, Genentech took the position that the Valle (1982)
11 reference clearly teaches the production of an immunologically functional
12 heterologous immunoglobulin molecule in eukaryotic cells transfected by separate
13 DNA molecules encoding its heavy and light chains, whereas during the prosecution
14 of the Cabilly II application, it was asserted that the Valle (1982) reference was
15 "readily distinguishable" because the oocytes were not transformed with DNA.
16

17 20. The Valle (1982) reference was, by Genentech's own assertions,
18 material to the patentability of at least some of the subject matter common to the
19 Cabilly II application and Boss patent claims. But the Cabilly Applicants did not
20 advise the Examiner that Genentech had relied upon this Valle (1982) reference in
21 opposing the Boss European patent, nor did it advise the Examiner of the contrary
22 positions that it had taken in the European opposition proceeding with respect to the
23 teachings of the Valle (1982) reference.
24

25 21. The Information Disclosure Statement submitted by the Cabilly
26 Applicants prior to declaration of the interference also identified, among other
27 references, Rice et al., Proc. Natl. Acad. Sci. 77:7862-7865 (1982). In its
28 Information Disclosure Statement, the Cabilly II Applicants characterized this

1 reference as being cited as part of a group of references identified “in the interests of
2 good order” because it was cited during prosecution of the Cabilly I application and
3 indicated that they were not providing a copy of this reference.
4

5 22. The citation provided to the PTO was, however, in error. When
6 opposing the Celltech European Boss patent, Genentech cited Rice et al., Proc. Natl.
7 Acad. Sci. 79:7862-7865 (1982), and argued that the subject matter of the European
8 Boss patent did not involve an inventive step over this disclosure in view of other
9 references.
10

11 23. Thus, although the Rice (1982) reference was, by Genentech’s
12 own assertions, material to the patentability of at least some of the subject matter
13 common to the Cabilly II application and Boss patent claims, the Cabilly Applicants
14 did not advise the Examiner that: (a) Genentech had relied upon this Rice (1982)
15 reference in opposing the Boss European patent; (b) that Genentech argued that the
16 Boss European patent did not involve an inventive step in view of this and other
17 references; or (c) that it had mis-cited this reference in its Information Disclosure
18 Statement. This information was material to the prosecution of the Cabilly II patent.
19

20 24. Also, during this post-interference and post-district court action
21 prosecution of the Cabilly II application (the “post-proceeding prosecution”), the
22 Cabilly Applicants submitted a substantial amount of material to the PTO, including
23 listings of numerous pleadings from the litigation as well as numerous prior art
24 references. Pursuant to the express provisions of the Manual of Patent Examining
25 Procedure, submission of such long lists should be avoided but, if necessary, then
26 Applicants are directed to “highlight” the documents known to be of most
27 significance. MPEP 2004(13). The Cabilly II Applicants did not do so.
28

1 25. Although the Cabilly II Applicants dumped numerous references
2 on the PTO, they failed to identify critical prior art, including U.S. Patent
3 No. 4,399,216, issued to Axel et. al. on August 16, 1983, assigned on its face to The
4 Trustees of Columbia University (the "216 patent"). On information and belief, the
5 '216 patent was known to Genentech, and its materiality to the Cabilly II claims and
6 recombinant production of antibodies in general was known to Genentech, at least
7 based on the fact that Genentech had taken a license of this patent for which it paid
8 substantial royalties.

9
10 26. The Cabilly II patent issued on December 18, 2001, and is
11 assigned on its face to Genentech. The Cabilly II patent is presently under
12 Reexamination (Control No. 90/007,542) at the PTO, where all claims of the
13 Cabilly II patent are currently under final rejection. The bases for rejection include
14 obviousness-type double patenting.

15
16 27. That the Rice (1982) reference is material to the patentability of
17 the Cabilly II patent claims is confirmed by the fact that it is has been relied upon by
18 the PTO in rejecting the Cabilly II patent claims during the reexamination
19 proceeding.

20
21 28. That the '216 patent is material to the patentability of the
22 Cabilly II patent claims is confirmed by the fact that it is has been relied upon by the
23 PTO in rejecting the Cabilly II patent claims during the reexamination proceeding.

24
25 29. The foregoing provides examples of actions demonstrating that,
26 during examination of the Cabilly II Application, while under a duty of candor to the
27 PTO, Genentech and/or the Cabilly Applicants intended to mislead the PTO and did
28 not act in good faith in dealing with the PTO. Intent can be inferred at least from the

1 fact that Genentech failed to disclose statements and references which, by its own
2 assertions in the Boss European Opposition proceedings, were material to the
3 patentability of the Cabilly II application claims.

4 5 THE LICENSE AGREEMENTS

6 **Abciximab (ReoPro[®])**

7 30. On December 5, 1994, Centocor entered into an Agreement with
8 Genentech under which it received, inter alia, a license under the Cabilly I patent and
9 under the application which ultimately issued as the Cabilly II patent to make, have
10 made, use, and sell substances capable of binding to the GPIIb IIIa receptor which,
11 but for the license, would infringe one or more claims of the patents (the "Genentech
12 Agreement"). Centocor has paid, and Genentech has accepted, royalties on sales of
13 abciximab, an antibody fragment which binds to the glycoprotein GPIIb IIIa of
14 human platelets and inhibits platelet aggregation.

15
16 31. There is an actual and justiciable controversy between Centocor,
17 Genentech and City of Hope with respect to whether making, using and selling
18 abciximab infringes any valid and enforceable claim of the Cabilly II patent.

19 20 **Infliximab (Remicade[®])**

21 32. On March 31, 1998, Centocor entered into a Patent License
22 Agreement with Celltech under which it received, inter alia, a non-exclusive
23 sublicense under the "Genentech Licensed Patents," which included the Cabilly I
24 patent and any patents maturing from applications that were continuations of the
25 Cabilly I patent, which includes the later-issued Cabilly II patent (the "Celltech
26 Agreement"). This was a license to develop, make, have made, use and sell a
27 pharmaceutical product containing a recombinant engineered antibody or antibody
28 fragment capable of binding specifically to TNF-alpha, being both the product later

1 marketed by Centocor as infliximab (Remicade[®]) and one additional product whose
2 research and development was conducted under the direction of Centocor by itself or
3 in collaboration with a third party.

4
5 33. On information and belief, at least a portion of the royalties that
6 Centocor pays to Celltech based on its infliximab (Remicade[®]) product are passed
7 through to Genentech and/or City of Hope.

8
9 **Ustekinumab (CNTO-1275)**

10 34. Ustekinumab (CNTO 1275) is a new, human monoclonal
11 antibody developed by Centocor which targets the cytokines interleukin-12 (IL-12)
12 and interleukin-23 (IL-23), naturally occurring proteins that are important in
13 regulating immune responses and that are thought to be associated with some
14 immune-mediated inflammatory disorders, including psoriasis.

15
16 35. All Phase III clinical trials believed necessary to support an
17 application for approval to sell ustekinumab in the United States have been
18 completed. In February 2008, the Biologics License Application (BLA) for
19 ustekinumab (CNTO 1275) was accepted for review by the U.S. Food and Drug
20 Administration for the treatment of chronic moderate-to-severe plaque psoriasis in
21 adults. Centocor expects to obtain regulatory approval to market and sell
22 ustekinumab in the United States within the next year.

23
24 36. Centocor has been making substantial preparations to market and
25 sell ustekinumab in the United States upon receipt of regulatory approval to do so. It
26 has hired and been training key management, support and sales personnel to market
27 and sell ustekinumab; retaining outside consultants and vendors to assist in its
28 marketing and sale of ustekinumab in the United States; has retained suppliers and

1 advertising agencies to prepare for the launch of the product; has prepared
2 promotional materials for the launch of the product; has initiated planning for medial
3 affairs and pharmacovigilance activities associated with the marketing of the product;
4 has built supply capacity; and is completing manufacturing and distribution launch
5 preparations.

6
7 37. Genentech has advised Centocor that its existing licenses would
8 not cover the marketing and sale of ustekinumab and has acknowledged that
9 Centocor will need an additional license from Genentech under the Cabilly II patent
10 for ustekinumab. There is an actual and justiciable controversy between Centocor,
11 Genentech, and City of Hope with respect to whether Centocor's making, using and
12 selling of ustekinumab will infringe any valid and enforceable claim of the Cabilly II
13 patent.

14
15 **FIRST CAUSE OF ACTION**
16 **PATENT INVALIDITY**

17 38. Centocor incorporates the allegations of paragraphs 1-37 as if
18 fully set forth herein.

19
20 39. An actual controversy has arisen and now exists between the
21 parties concerning the validity of the Cabilly II patent.

22
23 40. The Cabilly II patent is invalid because it is anticipated and/or
24 obvious under 35 U.S.C. §§ 102 and 103.

25
26 41. The Cabilly II patent is invalid based on the judicially created
27 doctrine of obviousness type double patenting and/or under 35 U.S.C. §§ 101 and/or
28 103.

1 42. The Cabilly II patent is invalid under 35 U.S.C. § 112.
2

3 43. Centocor hereby seeks a declaratory judgment that the Cabilly III
4 patent is invalid under 35 U.S.C. §§ 101, 102, 103, 112, *et seq.* and/or under the
5 judicially created doctrine of obviousness type double patenting.
6

7 **SECOND CAUSE OF ACTION**
8 **PATENT UNENFORCEABILITY**

9 44. Centocor incorporates the allegations of paragraphs 1-37 as if
10 fully set forth herein.
11

12 45. An actual controversy has arisen and now exists between the
13 parties concerning the enforceability of the Cabilly II patent.
14

15 46. The Cabilly II patent is unenforceable due to inequitable conduct
16 before the PTO. Such conduct includes, but is not limited to, hiding critical
17 references, failing to act with candor regarding the significance of certain prior art,
18 and failing to advise the PTO of positions taken by Genentech in European patent
19 proceedings that were inconsistent with representations made during prosecution of
20 the Cabilly II Application. On information and belief, the Cabilly Applicants and/or
21 Genentech withheld this material information and made these material
22 representations with intent to deceive the patent examiner.
23

24 47. Centocor hereby seeks a declaratory judgment that the Cabilly II
25 patent is unenforceable due to inequitable conduct.
26
27
28

THIRD CAUSE OF ACTION

NON-INFRINGEMENT

48. Centocor incorporates the allegations of paragraphs 1-31 and 34-37 as if fully set forth herein.

49. An actual controversy has arisen and now exists between the parties concerning whether Centocor's abciximab or ustekinumab antibody products infringe any valid and enforceable claim of the Cabilly II patent.

50. Centocor seeks a declaratory judgment that its making, using and selling of its abciximab and ustekinumab antibody products does not and will not infringe any valid and enforceable claim of the Cabilly II patent.

FOURTH CAUSE OF ACTION

CENTOCOR OWES NO ROYALTIES

51. Centocor incorporates the allegations of paragraphs 1-37 as if fully set forth herein.

52. An actual controversy has arisen and now exists between the parties concerning whether Centocor is entitled to recoup royalties paid to Genentech if the Cabilly II patent is deemed to be unenforceable. "Licensed Products" is defined in the Genentech Agreement to include products that would, if not licensed, infringe one or more claims of the Cabilly II patent "which have neither expired nor been held invalid by a court or other body of competent jurisdiction from which no appeal has been or may be taken." Because invalidity and unenforceability are distinct concepts under U.S. Patent laws, the License Agreement does not require Centocor to pay Genentech royalties on an unenforceable patent. Accordingly, Centocor is entitled to a declaratory judgment that Genentech must repay Centocor

1 the amounts Centocor paid to Genentech under the Genentech License Agreement
2 based on the Cabilly II patent if that patent is declared to be unenforceable.

3
4 53. An actual controversy has arisen and now exists between the
5 parties concerning whether Centocor is entitled to recoup royalties paid to Celltech
6 and passed through to Genentech and/or City of Hope if the Cabilly II patent is
7 deemed to be invalid or unenforceable. Issues relating to the validity, construction
8 and performance of the Celltech Agreement are governed by English law. The
9 Cabilly II patent may, in accordance with principles of English law, be declared to
10 have been invalid ab initio. Accordingly, Centocor is entitled to a declaratory
11 judgment that Genentech and/or City of Hope must repay Centocor the amounts
12 Celltech passed through under the Celltech Agreement based on Centocor's
13 infliximab (Remicade[®]) product if the Cabilly II patent is declared to be invalid or
14 unenforceable.

15
16 **PRAYER FOR RELIEF**

17 WHEREFORE, Plaintiff Centocor requests that judgment be entered in
18 favor of Centocor and against Defendants:

- 19
20 1. Declaring that the Cabilly II patent is invalid;
- 21
22 2. Declaring that the Cabilly II patent is not enforceable;
- 23
24 3. Declaring that Centocor's abciximab and ustekinumab products
25 do not infringe any valid and enforceable claim of the Cabilly II patent;
- 26
27 4. Awarding Centocor damages at least equivalent to any unjust
28 enrichment enjoyed by Genentech and/or City of Hope;

1 5. Awarding Centocor damages at least equivalent to any amounts
2 received by Genentech and/or City of Hope as royalties or other license fees due on
3 account of the Cabilly II patent;

4
5 6. Enjoining Genentech and City of Hope from enforcing the
6 Cabilly II patent;

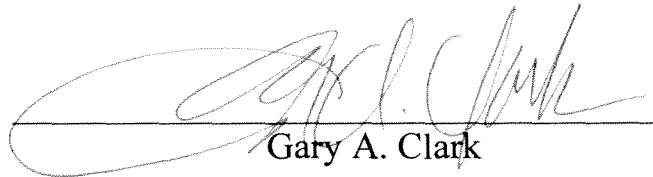
7
8 7. Awarding Centocor its costs and attorneys' fees; and
9

10 8. Awarding Centocor such other and further relief as the Court
11 may deem just and proper under the circumstances.
12

13 Dated: May 30, 2008

14 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

15
16 By



Gary A. Clark

18 Attorneys for Plaintiff
19 CENTOCOR, INC.
20
21
22
23
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27
28

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY

This case has been assigned to District Judge Percy Anderson and the assigned discovery Magistrate Judge is Alicia G. Rosenberg.

The case number on all documents filed with the Court should read as follows:

CV08- 3573 PA (AGR~~x~~)

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge

===== :
NOTICE TO COUNSEL

A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).

Subsequent documents must be filed at the following location:

☒ **Western Division**
312 N. Spring St., Rm. G-8
Los Angeles, CA 90012

☐ **Southern Division**
411 West Fourth St., Rm. 1-053
Santa Ana, CA 92701-4516

☐ **Eastern Division**
3470 Twelfth St., Rm. 134
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.

GARY A. CLARK, Cal. Bar No. 65455
 SHEPPARD, MULLIN, RICHTER & HAMPTON
 333 South Hope Street, 48th Floor
 Los Angeles, CA 90071-1448
 Telephone: (213) 620-1780
 Facsimile: (213) 620-1398

UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA

CENTOCOR, INC.

PLAINTIFF(S)

v.

GENENTECH, INC. and CITY OF HOPE
 NATIONAL MEDICAL CENTER,

DEFENDANT(S).

CASE NUMBER

CV08-03573 PA (AGR_x)

SUMMONS

TO: DEFENDANT(S): City of Hope National Medical Center, et AL.

A lawsuit has been filed against you.

Within 20 days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff an answer to the attached ☒ complaint ☐ amended complaint ☐ counterclaim ☐ cross-claim or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff's attorney, Gary A. Clark, whose address is 333 South Hope Street, 48th Floor, Los Angeles, CA 90071-1448. If you fail to do so, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Clerk, U.S. District Court

Dated: MAY 30 2008

By: LA'REE HORN
 Deputy Clerk



[Use 60 days if the defendant is the United States or a United States agency, or is an officer or employee of the United States. Allowed 60 days by Rule 12(a)(3).]

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET**

I (a) PLAINTIFFS (Check box if you are representing yourself <input type="checkbox"/>) CENTOCOR, INC.	DEFENDANTS GENENTECH, INC. and CITY OF HOPE NATIONAL MEDICAL CENTER
(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.) Gary A. Clark, Cal. Bar No. 65455, Sheppard, Mullin, Richter & Hampton LLP 333 South Hope Street, 48th Floor, Los Angeles, CA 90071-1448 (213) 620-1780	Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an X in one box only.) <input type="checkbox"/> 1 U.S. Government Plaintiff <input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) <input type="checkbox"/> 2 U.S. Government Defendant <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only (Place an X in one box for plaintiff and one for defendant.) <table style="width:100%; border: none;"> <tr> <td style="width:40%;"></td> <td style="width:10%; text-align: center;">PTF</td> <td style="width:10%; text-align: center;">DEF</td> <td style="width:30%;"></td> <td style="width:10%; text-align: center;">PTF</td> <td style="width:10%; text-align: center;">DEF</td> </tr> <tr> <td>Citizen of This State</td> <td align="center"><input type="checkbox"/> 1</td> <td align="center"><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business in this State</td> <td align="center"><input type="checkbox"/> 4</td> <td align="center"><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td align="center"><input type="checkbox"/> 2</td> <td align="center"><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business in Another State</td> <td align="center"><input type="checkbox"/> 5</td> <td align="center"><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td align="center"><input type="checkbox"/> 3</td> <td align="center"><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td align="center"><input type="checkbox"/> 6</td> <td align="center"><input type="checkbox"/> 6</td> </tr> </table>		PTF	DEF		PTF	DEF	Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in this State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
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Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5																				
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6																				

IV. ORIGIN (Place an X in one box only.) <input checked="" type="checkbox"/> 1 Original Proceeding <input type="checkbox"/> 2 Removed from State Court <input type="checkbox"/> 3 Remanded from Appellate Court <input type="checkbox"/> 4 Reinstated or Reopened <input type="checkbox"/> 5 Transferred from another district (specify): <input type="checkbox"/> 6 Multi-District Litigation <input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judge
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V. REQUESTED IN COMPLAINT: JURY DEMAND: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No (Check "Yes" only if demanded in complaint.)	<input type="checkbox"/> MONEY DEMANDED IN COMPLAINT: \$ 0
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VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.) Declaratory judgment of patent invalidity, unenforceability, and non-infringement
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VII. NATURE OF SUIT (Place an X in one box only.)
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OTHER STATUTES <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Act <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Info. Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes	CONTRACT <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	TORTS PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Fed. Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury-Med Malpractice <input type="checkbox"/> 365 Personal Injury-Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus-Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	TORTS PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability BANKRUPTCY <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 American with Disabilities - Employment <input type="checkbox"/> 446 American with Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 Habeas Corpus <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus/Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition FORFEITURE / PENALTY <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety /Health <input type="checkbox"/> 690 Other	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input checked="" type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609
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FOR OFFICE USE ONLY: Case Number:

AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET

VIII(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed? ☒ No ☐ Yes
 If yes, list case number(s) _____

VIII(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case? ☐ No ☒ Yes
 If yes, list case number(s) CV 03-02567 MRP (CTx)

Civil cases are deemed related if a previously filed case and the present case:

- (Check all boxes that apply) ☐ A. Arise from the same or closely related transactions, happenings, or events; or
☒ B. Call for determination of the same or substantially related or similar questions of law and fact; or
☐ C. For other reasons would entail substantial duplication of labor if heard by different judges; or
☒ D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

IX. VENUE: (When completing the following information, use an additional sheet if necessary)

(a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named plaintiff resides.
☐ Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b)

County in this District *	California County outside of this District; State, if other than California; or Foreign Country
	Centocor - San Diego, CA and Pennsylvania

(b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named defendant resides.
☐ Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

County in this District *	California County outside of this District; State, if other than California; or Foreign Country
City of Hope - Los Angeles	Genentech - San Mateo, Solano, San Diego, CA

(c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** claim arose.
Note: In land condemnation cases, use the location of the tract of land involved.

County in this District *	California County outside of this District; State, if other than California; or Foreign Country
Los Angeles	

* Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties
Note: In land condemnation cases, use the location of the tract of land involved

X. SIGNATURE OF ATTORNEY (OR PRO PER)

Date

5/30/08

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))